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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 251 and 258

U.S. Customs and Border Protection

19 CFR Part 4

[Docket No. USCBP-2021-0046; CBP Dec. No. 21-19]

RIN 1651-AB18

Automation of CBP Form I-418 for Vessels

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This rule amends the regulations in title 8 and title 19 of the Code of Federal Regulations (CFR) regarding the submission of U.S. Customs and Border Protection (CBP) Form I-418, Passenger List - Crew List (Form I-418) in paper form. Currently, the master or agent of every commercial vessel arriving in the United States, with limited exceptions, must submit Form I-418, along with certain information regarding longshore work, in paper form to CBP at the port where immigration inspection is performed. Most commercial vessel operators are also required to submit a paper Form I-418 to CBP at the final U.S. port prior to departing for a foreign place. DHS is modifying the applicable regulations to provide for the electronic submission of Form I-418. Under this rule, vessel operators will be required to electronically submit the data elements on Form I-418 to CBP through an electronic data interchange system (EDI) approved by CBP in lieu of submitting a paper form. This will streamline vessel arrival and departure processes by providing for the electronic submission of the information collected on the Form I-418, eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping.

DATES: *Effective date:* This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments due date: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number, by the following method:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2021-0046.

Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the “Supplementary Information” section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to relevant COVID-19-related restrictions, CBP has temporarily suspended on-site public inspection of submitted comments.

FOR FURTHER INFORMATION CONTACT: For title 8 of the Code of Federal Regulations inquiries, contact Stephen Dearborn, Enforcement Programs Division, Admissibility and Passenger Programs, Office of Field Operations, Stephen.M.Dearborn@cbp.dhs.gov or (202)-344-1707; for title 19 of the Code of Federal Regulations inquiries, contact Brian Sale, Manifest and Security Division, Cargo and Conveyance Security, Office of Field Operations, Brian.A.Sale@cbp.dhs.gov or (202)-325-3338.

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. The Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) invite comments that relate to

the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

A. Overview

As discussed in detail below, current regulations require commercial vessels and their operators¹ to meet several data submission requirements when arriving in the United States from a foreign place or outlying possession of the United States and when departing the United States for a foreign place or outlying possession of the United States. Both CBP and the U.S. Coast Guard (USCG) collect information in these contexts, and many of the data elements that the two agencies collect overlap. Some of this data must be submitted electronically, while some of it must be submitted on paper, such as the Form I-418, Passenger List - Crew List. *See* section 251.5 of title 8 of the Code of Federal Regulations (8 CFR 251.5). Through this rule, CBP is streamlining the vessel arrival and departure processes by eliminating redundant data submissions, providing for the electronic submission of the information collected on the Form I-418, simplifying vessel inspections, and automating recordkeeping for the Form I-418.

The USCG requires commercial vessel operators to submit a Notice of Arrival (NOA) to the National Vessel Movement Center (NVMC)² through its electronic Notice of Arrival/Departure (eNOA/D) system or via email in advance of U.S. arrival.³ *See* 33 CFR 160.201-216. In addition to other data elements, each NOA must include information on the crew and passengers on board the vessel. *See* 33 CFR 160.206(a). Upon satisfactory

¹ For the purposes of this document, vessel “operators” include masters or commanding officers, or authorized agents, owners, or consignees.

² The NVMC was established by USCG in 2001 to operate as a single clearinghouse for the submission and processing of notice of arrival and departure information for vessels entering and departing U.S. ports and facilities.

³ When a vessel operator is in an area without Internet access or experiences technical difficulties, and he or she has no shore-side support available, the vessel operator may fax or phone the submission to the NVMC. *See* 33 CFR 160.210(a).

submission, USCG processes the information via the eNOA/D web portal and then the system automatically transmits it to CBP as an Advance Passenger Information System (APIS) manifest. An APIS manifest is a CBP pre-arrival requirement. *See* 8 CFR 231.1(a) and 19 CFR 4.7b.

In addition to the APIS manifest data, which must be submitted electronically to CBP prior to arrival, DHS regulations require the master or agent of every vessel arriving in the United States from a foreign place or outlying possession of the United States, with the exception of certain vessels in the Great Lakes, to present a manifest of all crewmen onboard, on a Form I-418, to CBP at the port of entry where immigration inspection is performed.^{4,5} *See* 8 CFR 251.1(a)(1). Manifest information collected on the Form I-418 includes details about the passengers and crewmen on board the vessel and whether any of the crewmen will be performing longshore work at any U.S. port before the vessel departs from the United States. *See* 8 CFR 251.1. If longshore work is to be performed, Form I-418 requires the vessel operator to note which exception of the Immigration and Nationality Act permits the work. *See* 8 CFR 251.1(a)(2)(ii) and 258.2.

If manifest information changes after the initial submission, the vessel operator must update the APIS manifest electronically through the eNOA/D system. *See* 19 CFR 4.7b(b)(2)(ii). Additionally, a CBP officer at the coastwise port generally updates the vessel's original paper Form I-418 to reflect any changes.

Upon departure from the United States, USCG collects updated manifest information from commercial vessel operators via a Notice of Departure (NOD) submitted to the NVMC through eNOA/D or another electronic format. *See* 33 CFR 160.201-216. Also at the time of departure, CBP requires vessel operators to update their original paper Form I-418 submission to include a list of departing crew, crew changes, and trip departure details.⁶ *See* 8 CFR 251.3. A

⁴ For more information on the exemptions for certain Great Lakes vessels, *see* 8 CFR 251.1(a)(3).

⁵ Due to the high volume of crew and passengers on cruise ships, cruise ship operators generally submit the two signature pages of the Form I-418 on paper along with a compact disc containing their passenger and crew manifest details.

⁶ Certain Great Lakes vessels are also exempt from this requirement. *See* 8 CFR 251.3(b).

CBP officer at the port of departure typically verifies any changes to the Form I-418 information and sends the updated form to the vessel's first port of arrival for final data reconciliation and recordkeeping purposes.

Despite similarities in the vessel arrival and departure data submitted in accordance with the Form I-418, APIS, and USCG requirements, data transmitted electronically, such as through eNOA/D, does not satisfy the current Form I-418 regulatory requirements, which state that Form I-418 must be submitted in paper format. *See* 8 CFR 251.5. As described in depth below, these overlapping submission requirements create a substantial burden on vessel operators, and the maintenance, verification, and storage of the paper Form I-418 is a significant burden on CBP officers and the agency as a whole.

To reduce redundant data submissions and to ease burdens on vessel operators and the agency itself, CBP is modifying its regulations to allow for the electronic submission of Form I-418 only. The updated regulations require vessel operators to submit the data elements required on Form I-418 electronically via an electronic data interchange system (EDI) approved by CBP. Presently, the CBP-approved EDI is eNOA/D. Data submitted via eNOA/D will be automatically transmitted to CBP, which will use the information to populate an electronic version of the Form I-418.⁷ The information currently collected through eNOA/D will satisfy the required data elements for populating the electronic version of the Form I-418 for CBP's purposes. The act of electronically submitting the data elements required on Form I-418 constitutes the Master's certification that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel. As

⁷ The embark date required on Form I-418 is transmitted to CBP via eNOA/D. The disembark date/date separated (i.e., the date when a crewmember permanently departs the vessel) is calculated by CBP. This rule does not change this practice

explained further below, CBP will no longer collect the vessel operator's signature for the Master's certification during inspection. The electronically submitted information will then be reviewed and confirmed by the inspecting CBP officer. This rule will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping. Any changes regarding the CBP-approved EDI will be announced in a notice published in the *Federal Register*.

B. Current Commercial Vessel Arrival and Departure Process

Commercial vessels arriving at and departing from U.S. ports of entry must comply with statutory and regulatory requirements to engage in U.S. trade.⁸ Commercial vessels, regardless of whether they are cargo, non-cargo,⁹ or cruise ships, traveling to a U.S. port of entry from a foreign port or place must begin their trip by submitting certain manifest information electronically to USCG and CBP prior to arrival. Once at a U.S. port of entry, commercial vessels must submit additional information and undergo customs and immigration inspections and processing. These arrival requirements vary by commercial vessel type and slightly differ by port of entry.

1. Cargo and Non-Cargo Vessels

In general, upon a cargo or non-cargo vessel's arrival, CBP officers at the port of entry travel to the vessel's docking station and board it. Next, CBP requests and reviews the vessel's entry and manifest documentation, along with passenger and crew passports and visas. For manifest verification, the vessel's operator or agent typically submits two copies of the vessel's passenger and crew manifest using Form I-418 to the CBP officers aboard the vessel. CBP uses the paper Form I-418 for crew and passenger admissibility inspections and processing.

⁸ The regulatory requirements concerning how and when a vessel operator must submit an I-418 are contained in parts 251 and 258 of title 8 of the Code of Federal Regulations, and in part 4 of title 19 of the Code of Federal Regulations.

⁹ For the purposes of this document, non-cargo commercial vessels include all commercial vessels other than cargo ships and cruise ships. Tugboats fall under this classification.

During the admissibility inspection process, a CBP officer verifies the actual crew and passengers on hand and those departing the vessel using a copy of the paper Form I-418, the previously submitted APIS manifest, pre-arrival screening results, and passports and visas. Barring any unresolvable issues, the CBP officer annotates the inspection results, including any discrepancies, on the paper Form I-418 submissions. The CBP officer collects the vessel operator's signature on the form and signs and stamps the documents. The CBP officer then provides one copy of the signed, stamped, and annotated Form I-418 to the vessel operator to use during coastwise travel and upon departure from the United States. The CBP officer at the first port of arrival retains the other copy of the original signed, stamped, and annotated Form I-418 for subsequent data reconciliation and recordkeeping purposes.

After the admissibility inspections and processing are complete, the CBP officers disembark the vessel, travel back to their port office, manually record the results of their inspections and related actions into CBP data systems, and send applicable Form I-418 supporting documentation, to the next port of arrival.

Once granted entry, the vessel may engage in further coastwise travel within the territorial waters of the United States or depart the United States. If manifest information changes after initial submission, the vessel operator must update the APIS manifest electronically through the eNOA/D system. The vessel operator must also present the initial signed, stamped, and annotated Form I-418 copy to a CBP officer when requested at a coastwise port of arrival.¹⁰ The CBP officers at these subsequent ports of arrival update the Form I-418 to reflect any manifest changes, verify new supporting documentation if applicable, take admissibility actions as necessary, and provide the updated Form I-418 to the vessel operator for further U.S. travel and ultimate departure. The CBP officers at each coastwise port send a copy

¹⁰ Per sections 235 and 252 of the Immigration and Nationality Act, CBP may board and inspect vessels at subsequent coastwise ports of arrival. *See* 8 USC 1225(d); *See also* 8 USC 1282.

of the updated Form I-418 to the vessel's first port of arrival for data reconciliation and recordkeeping purposes.

Upon departure from the United States, USCG requires commercial vessel operators to submit a NOD to NVMC through eNOA/D or another electronic format. CBP requires these vessel operators to update their APIS manifest electronically through the eNOA/D system; update their paper Form I-418 to include a list of departing crew, crew changes, and trip departure details; and submit the paper Form I-418 to CBP. A CBP officer at the port of departure verifies any additional modifications to the form information and sends the completed Form I-418 and supporting documentation to the vessel's first port of arrival. There, a CBP officer manually reconciles the original Form I-418 retained during the initial arrival inspection with the subsequently updated versions of the form and related documentation.

CBP officers spend considerable time vetting pre-arrival data, traveling to/from a vessel, boarding/disembarking the ship, and conducting admissibility inspections and processing. In addition, CBP officers typically spend 120 minutes (2 hours) performing post-inspection processing for each vessel's paper Form I-418 submission from arrival to departure.¹¹ This includes the time CBP spends manually recording form information and actions into CBP systems, communicating between ports of arrival and departure, manually validating and reconciling data, gathering and sending supporting documentation, physically storing and shipping the manifest package, and tracking the manifest package.

2. Cruise Ships

Cruise ships follow slightly different procedures from cargo and non-cargo vessels upon arriving at a U.S. port of entry. At their first port of arrival, cruise ship crewmembers and passengers generally offload the ship at a designated terminal, where CBP officers are stationed and readily available to conduct customs and immigration inspections and processing. Under the standard arrival process, the cruise ship operator generally provides two copies of Form I-418's

¹¹ Source: Correspondence with CBP's Office of Field Operations on November 6, 2020.

complete passenger and crew manifest with all printed pages.¹² Cruise ship operators arriving at some POEs submit just two copies of the two signature pages of the paper Form I-418 and a compact disc of the manifest in lieu of submitting numerous pages of paper to CBP.

During the standard admissibility inspection process, a CBP officer validates and verifies the cruise ship's actual crew and passengers on hand and those departing the vessel generally using the Form I-418, the previously submitted APIS manifest, pre-arrival screening results, and passports and visas. Any inspection results and admission/landing rights from such processing are directly recorded into CBP data systems. During cruise ship crew and passenger processing, the CBP officer also collects the vessel operator's signature on the form copies, signs and stamps the documents. The CBP officer then provides one copy of the signed and stamped Form I-418 or signature pages for the vessel operator to retain and use in coastwise travel and upon departure from the United States. The CBP officer at the first port of arrival retains the other copy of the signed, stamped, and annotated Form I-418 or signature pages for subsequent data reconciliation and recordkeeping purposes.

Once granted entry, the cruise ship may engage in further coastwise travel or depart the United States. If manifest information changes during coastwise movement, the vessel operator must update the APIS manifest electronically through the eNOA/D system. The vessel operator must also present the initial signed, stamped, and annotated Form I-418 signature pages to a CBP officer at each coastwise port of arrival upon request. The CBP officers at these subsequent ports of arrival review the Form I-418 or signature pages and update CBP data systems to reflect any manifest changes, verify new, applicable supporting documentation, take admissibility actions as necessary, and provide the Form I-418 or signature pages to the vessel operator for further U.S. travel.

¹² An unknown number of cargo and non-cargo vessel operators and cruise ship operators arriving/departing at some POEs may provide additional copies of the Form I-418 to CBP during each standard arrival/departure. Source: Email correspondence with CBP's Office of Field Operations on November 18, 2020.

As discussed above, upon departure from the United States, USCG requires commercial vessel operators to submit a NOD to the NVMC through eNOA/D or another electronic format. CBP requires these vessel operators to update their APIS manifest electronically through an approved system (currently, the eNOA/D system) and submit the two signature pages of the signed and stamped Form I-418 to CBP. *See* 8 CFR 251.3. A CBP officer at the port of departure verifies any additional modifications to the form information and sends the completed Form I-418 signature page and supporting documentation to the vessel's first port of arrival. There, a CBP officer manually reconciles the original Form I-418 signature page, supporting documentation, and manifest compact disc with the subsequently updated versions of the form and related documentation.

In addition to time spent vetting pre-arrival data and conducting admissibility inspections and processing, CBP officers spend an average of 20 minutes (0.333 hours) performing post-inspection processing for each cruise ship's Form I-418 submission from arrival to departure.¹³ This includes the time CBP spends manually validating and reconciling data, gathering supporting documentation, communicating between ports of arrival and departure (when necessary), physically storing and shipping the manifest package, and tracking the manifest package (when necessary).

3. Additional Form I-418 Requirements for Vessels Under Title 19 CFR

Part 4 of title 19 of the CFR provides additional requirements as to when and how a vessel operator must submit Form I-418. Under 19 CFR 4.7(a), the master of every vessel arriving in the United States and required to make entry must have on board a manifest that includes Form I-418. In some instances, a vessel operator may submit a Form I-418 in lieu of the Crew's Effects Declaration, CBP Form 1304, with supporting documentation. *See* 19 CFR 4.7(a), 4.7a(b)(2), and 4.81(d). However, when given the option, most vessel operators submit

¹³ Source: Email correspondence with CBP's Office of Field Operations on June 2, 2020.

CBP Form 1304 instead of Form I-418 with additional supporting documentation, such as individual CBP Forms 5129, Crew Member's Declaration.

C. Form I-418 Automation Test Program

Recognizing the need to reduce redundant data collection and implement a seamless process to receive and use vessel arrival and departure information under various regulations, CBP developed a voluntary Form I-418 automation test program. The program tested CBP's ability to gather and reconcile information submitted for eNOA/D, APIS, and other electronic purposes for use in generating an automated, electronic Form I-418. CBP implemented this test in two phases as described below. The test varied somewhat across participating ports.

Although the automated test program is still in operation at many ports of entry, the test program will be replaced by the regulatory program addressed in this rule.

CBP launched the first phase of the voluntary automation test program at four ports of entry in January 2011. The first phase allowed CBP officers and ports to evaluate the submission of Form I-418 data in both electronic and paper format to verify the similarity of information captured and identify any anomalies in the methods used. Moreover, it allowed CBP officers to rely solely on electronic manifest data submissions to build a vessel's departure manifest, thus eliminating the need for vessel operators to submit the departure manifest in paper format.

By June 2011, CBP implemented the second and final phase of the voluntary test program, which fully transitioned the submission of Form I-418 data to an automated, paperless process for certain commercial vessel operators. In place of submitting the required I-418 information on the paper Form I-418, vessel operators participating in the I-418 Automation test program could transmit this data through eNOA/D and APIS data submissions. Under the automation test, CBP systems automatically compiled eNOA/D, APIS, and any other electronic manifest data submitted electronically by test participants prior to arrival and at departure into a pre-populated electronic Form I-418. Upon a participating cargo or non-cargo vessel's arrival,

CBP largely pre-vetted the electronic Form I-418 and printed out a paper copy of the form for customs and immigration inspection and processing purposes.

As with current arrival requirements for cargo and non-cargo commercial vessels, a CBP officer then boarded the vessel, conducted inspections, annotated the admissibility inspection results on the paper Form I-418, collected the vessel operator's signature on the form, and signed and stamped the document. Before disembarking the vessel, the CBP officer had the vessel operator make a copy of the signed, stamped, and annotated paper Form I-418 for further coastwise travel and departure. The CBP officer then returned to the port office to manually record the inspection results and related actions annotated on the original Form I-418 into CBP data systems.

For cruise ships participating in the I-418 Automation test program, CBP generally pre-vetted the electronic Form I-418, printed out a paper copy of the Form I-418's two signature pages, and conducted passenger and crew processing like the standard process at a terminal. Instead of requiring the submission of a full paper Form I-418 or manifest CDs, CBP officers largely conducted arrival inspections and processing electronically at the terminal. CBP officers also used the two paper Form I-418 signature pages to collect the vessel operator's signature and to sign and stamp the pages to generally meet existing paper Form I-418 retention requirements.

Before departing for their next port of call, test participants could transmit any manifest changes subsequent to the initial inspection at the port of arrival via the eNOA/D system. These changes included, but were not limited to, the sign-on or sign-off of crewmembers. As under the standard commercial vessel arrival/departure process, a CBP officer at the next port of call verified that the information submitted met the vessel's regulatory requirements. Upon departure from the United States, a CBP officer at the port of departure performed an electronic reconciliation of the vessel's arrival, coastwise, and departure manifest data and addressed any discrepancies. Then, the officer sent all paper documentation, typically via fax, to the first port of arrival.

In 2015, CBP migrated to mobile devices that allowed CBP officers to electronically conduct Form I-418 processing for cargo and non-cargo vessel arrivals (including I-418 Automation test program participants and non-participants) at different ports of entry, thereby removing the need to print off a paper Form I-418. With these devices, CBP officers directly recorded the inspection results and related actions into CBP data systems at the time of inspection and processing. In 2016, CBP successfully deployed its preexisting electronic signature (hereafter, “e-signature”) capability through its mobile devices at five major sea ports of entry. This tool allowed for the electronic collection of vessel operator and CBP officer signatures on the Form I-418, which removed the need to print off a copy of the Form I-418 and have the vessel operator sign it. Despite these streamlined electronic processing methods, CBP continued to also record vessel inspection results and signatures on the paper form and physically stamp the form to meet the regulatory requirements in place regarding the submission and retention of paper Form I-418.

Most U.S. ports of entry along with approximately 15 percent of cargo and non-cargo vessels and 56 percent of cruise ships are fully or partially participating in the above-described voluntary automation test program, including electronic submissions and e-signature capabilities.¹⁴

D. Form I-418 Automation Regulatory Program

CBP is amending its regulations to require the electronic submission of the data elements required on Form I-418 in lieu of its current paper form. This will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping. The updated regulations will require vessel operators to electronically submit the data elements required on the Form I-418 via an EDI approved by CBP. CBP will continue to use the eNOA/D system as the approved EDI. Under this process, CBP systems will compile eNOA/D, APIS, and any other electronic manifest data submitted by vessel

¹⁴ Based on fiscal year (FY) 2019 data.

operators to the NVMC prior to arrival and at departure into an automated CBP system. CBP will use its system for all commercial vessel crew and passenger admissibility inspections and processing, and thus generally establish a fully paperless passenger and crew list process for all commercial vessel arrivals and departures. Any changes to the CBP-approved EDI will be announced in a notice published in the *Federal Register*.

With this automated system, for each commercial vessel arrival from a foreign port or place, CBP will be able to pre-vet the vessel's electronic passenger and crew list, travel to/from and board/disembark the vessel (for cargo and non-cargo vessels only), conduct inspections, and record the admissibility inspection results and related actions in real time using a mobile device or computer station (for the majority of cruise ships).¹⁵ During arrivals/departures processed with mobile devices, CBP officers will directly record the inspection results and related actions into CBP data systems at the time of inspection and processing, eliminating the need for CBP officers to manually input the inspection results and related actions into CBP data systems later at the port office. CBP will also use the mobile devices to verify the electronically submitted data during the inspection process. The inspecting CBP officer will no longer collect the vessel operator's signature for the Master's certification, as now the act of submitting the data electronically will constitute certification. Once the passenger and crew list is verified electronically by the inspecting CBP officer, CBP will generate and transmit a read-only copy of the electronic Form I-418, only upon request, with an electronic CBP receipt number, by email to the vessel operator for use during coastwise movement or upon departure from the United States. The verified electronic passenger and crew list will also be converted to a writeable file and stored in CBP data systems.

As in the automation test program, before departing for their next port of call, vessel operators will be able to transmit any manifest changes subsequent to the vessel's inspection at

¹⁵ CBP processes the majority of cruise ship arrivals at terminals using computer stations; however, CBP now processes some cruise ship arrivals using mobile devices.

the first port of arrival via the NVMC. A CBP officer at the next port of arrival will verify these changes and record all updates, inspection results, and related actions in real time in the CBP system using a mobile device or computer station. The CBP officer will then save the updated electronic passenger and crew list in CBP data systems, and email a read-only copy to the vessel operator, if requested. Upon departure from the United States, a CBP officer at the port of departure will verify the vessel's arrival, coastwise, and departure manifest data, which CBP data systems will reconcile automatically, and address any discrepancies. Thereafter, the CBP officer will save the completed electronic passenger and crew lists in CBP data systems, where it will be stored electronically for at least five years. In the limited instances where a paper Form I-418 is submitted, CBP will continue its current process of collecting, verifying, and physically storing all paper Form I-418 supporting documentation.

E. Discussion of Regulatory Changes

DHS is amending parts 251 and 258 of title 8 of the CFR, as well as part 4 of title 19 of the CFR, as set forth below, to automate Form I-418 and, in some provisions, eliminate the option to submit the Form I-418 in lieu of other required forms in order to reflect current trade practices and improve efficiency in data submission. The amendments also update the regulations to incorporate "plain language" consistent with Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821).

1. 8 CFR Part 251

Section 251.1 addresses "Arrival manifests and lists" in the immigration context. Section 251.1(a) sets out the requirements for arrival manifests and lists for vessels. Specifically, this section requires the master or agent of every vessel to submit a paper Form I-418 to CBP at the port where immigration inspection is performed and that the master or agent provide certain information regarding longshore work. This section is being amended to reflect the new procedure through which the information requested on Form I-418 and about longshore work is submitted electronically through an EDI approved by CBP. Conforming amendments are being

made throughout this section to accommodate the new submission process. For instance, where the regulations state that the master or agent must “note on” the manifest certain information about longshore work, the regulations are being amended to state that this information must now be “indicate[d] in” the manifest, because such additional information and annotations will generally no longer be collected on a hard copy, but will be done through an electronic interface.

Section 251.1(a) is also being amended to include two exceptions to the new general rule that I-418 and longshore work data be submitted electronically. The first exception is where the master or agent of the vessel is unable to electronically submit the data elements required on Form I-418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning, or there is no Internet access, and there is no shore-side support available. The second is where CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information, or where CBP, in its discretion, determines that a paper Form I-418 is acceptable under the circumstances presented by the master or agent of a vessel. The latter includes, but is not limited to, where there is a medical or weather emergency, or, in the case of longshore work, when information and relevant data cannot be submitted through the eNOA/D system due to its format.

Lastly, additional minor amendments are being made to section 251.1 to incorporate “plain language” including replacing the word “shall” with either “must” or “will”, as appropriate.

Section 251.3 addresses “Departure manifests and lists for vessels” in the immigration context. Specifically, this section requires the master or agent of every vessel to submit a paper Form I-418 to CBP at the port from which the vessel is to depart directly to some foreign place or outlying possession of the United States. This section is being amended to reflect the new procedure through which the information requested on the Form I-418 is submitted electronically through an EDI approved by CBP.

Section 251.3 is also being amended to include two exceptions to the new general rule that I-418 data be submitted electronically. The first is where the master or agent of the vessel is unable to electronically submit the data elements required on Form I-418 via an electronic data interchange system approved by CBP due to technical issues, such as when an onboard computer system is malfunctioning. The second exception allows for a paper Form I-418 to be submitted when CBP is experiencing technical issues or where CBP, in its discretion, determines that a paper Form I-418 is acceptable under the circumstances presented by the master or agent of a vessel.

Section 251.5 requires the master or commanding officer, or authorized agent, owner, or consignee, of a commercial vessel or commercial aircraft arriving in or departing from the United States to submit arrival and departure manifests in a paper format in accordance with §§ 251.1, 251.3, and 251.4. This section is being amended to remove references to paper, as this information will now be submitted electronically in the vessel context.

2. 8 CFR Part 258

Section 258.2 requires masters and agents who use nonimmigrant crewmen to perform longshore work under one of the exceptions listed in the section, to indicate on the crew manifest that an exception is being used and to note which exception will be performed. Among other things, it sets forth the documentation that must be presented. This section is being amended to reflect the new procedure through which the information requested on the Form I-418 is submitted electronically through an EDI approved by CBP. This rule does not make changes to any of the other documentation requirements in section 258.2. Additional minor amendments are being made to section 258.2, such as replacing the term “shall” with “must.” The term “Immigration and Naturalization Service” is also being updated and replaced with “CBP.”

3. 19 CFR Part 4

Section 4.7 concerns “Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.” Pursuant to section 4.7(a), a paper Form I-418 is a

required document for the manifest. This section is being amended to reflect the new electronic submission of the data elements required on Form I-418. Section 4.7(a) is being amended to require vessel operators to submit the data elements required on Form I-418 via the EDI approved by CBP, and to provide that the electronic submission will be considered part of the manifest required under this section.

Section 4.7a addresses “Inward manifest; information required; alternative forms.” Pursuant to Section 4.7a(b)(2), the master of a vessel may, in lieu of describing the articles on CBP Form 1304, furnish a CBP Form I-418. However, submitting CBP Form I-418 with the required CBP Form 5129 instead of CBP Form 1304 generally takes more time for the trade community to complete and takes more time for CBP to review and process the forms, as well as providing redundant information contained in other required forms. Therefore, to reflect current trade practices and improve data submission efficiency, this section is being amended to remove the option of filing a paper Form I-418 instead of CBP Form 1304. Conforming edits are also being made to section 4.7(a), for the same reason.

Sections 4.7a(d) and (e) are being amended to incorporate the information submission requirements contained in section 4.7b concerning the APIS data. Section 4.7a(e) is being amended to remove the certification requirements. Currently, the regulation requires a paper form certification to be attached to Form I-418. In light of the automation of CBP Form I-418, it will be impractical to require a paper form certification. Under this rule, vessel operators will be required to submit the data elements required on CBP Form I-418 via an electronic data interchange system approved by CBP. The regulation specifies that the act of electronically submitting the data will serve as the Master’s certification, as described further in this preamble’s discussion of the amendments to section 4.50.

Section 4.50 concerns the passenger lists that the master of every vessel arriving at a U.S. port from a foreign port or place must submit. Specifically, section 4.50(a) requires the master of the vessel to submit Form I-418 if the vessel is arriving from a noncontiguous foreign territory

and is carrying steerage passengers. Section 4.50(a) is being amended to reflect the new procedure for submitting the data elements of Form I-418 through an EDI approved by CBP, including reference to the required information required under section 4.7b(b)(3) for such passengers. Section 4.50 is also being amended to include a new paragraph (c) that will replace the paper form certification requirement in section 4.7a(e). New subsection 4.50(c), provides that by the act of submitting the data elements required on CBP Form I-418 via an electronic data interchange system approved by CBP, the vessel operator certifies that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

Section 4.81 addresses “Reports of arrivals and departures in coastwise trade.” Section 4.81(d) provides the master of the vessel with an option of either submitting the traveling Crew’s Effects Declaration, Customs Form 1304, or Form I-418 with attached Customs Form 5129, with the port director upon arrival at each port in the United States. Like the amendment to remove the option to submit Form I-418 in section 4.7a, this section is being amended to remove the option of filing a Form I-418 instead of CBP Form 1304 to reflect current trade practices and improve data submission and efficiency.

Section 4.91 concerns the diversion of a vessel and the transshipment of cargo. Section 4.91(c) requires that when inward foreign cargo or passengers are transshipped to another vessel under customs supervision, a separate traveling manifest must be used for the transshipped cargo or passengers. Section 4.91(c) provides the master of the vessel with the option of submitting either a Cargo Declaration, CBP Form 1302, or Form I-418. This section is being amended to reflect the new procedure for submitting the data elements of Form I-418 through an EDI approved by CBP.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the *Federal Register* (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to this prior notice and comment requirement for “rules of agency organization, procedure, or practice” 5 U.S.C. 553(b)(A). This interim final rule is a procedural rule promulgated for efficiency purposes that falls within this exception.

This rule is procedural because it merely automates an existing reporting requirement for vessel masters or agents pursuant to existing statutes and regulations. *See* 8 U.S.C. 1103, 1182, 1221, 1281, 1282; 8 CFR part 2; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; and 19 CFR part 4. The rule changes the format in which vessel masters or agents must present required information to CBP. Under the amended regulations, vessel masters or agents will no longer be required to complete and submit the paper Form I-418. Instead, all required information must be submitted to CBP electronically through the electronic data interchange system approved by CBP, which has been the practice for most vessel masters and agents by submitting the information through eNOA/D. This rule neither affects the substantive criteria by which CBP officers inspect vessels upon arrival or departure nor the nature of the information required by CBP.

Although this procedural rule is exempt from prior notice and comments procedures, DHS is providing the public with the opportunity to comment without delaying implementation of this rule. DHS will respond to the comments received when it issues a final rule.

B. Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and Review) direct agencies to assess the costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by OMB. CBP has also prepared a regulatory impact assessment to help inform stakeholders of the impacts of this rule, which CBP has summarized below. The complete standalone analysis can be found in the public docket for this rulemaking at <http://www.regulations.gov>. The standalone analysis also focuses on the costs and benefits experienced during the I-418 Automation test program period (FY 2011 through FY 2020).

1. Executive Summary

Through the Automation of CBP Form I-418 for Vessels Interim Final Rule, CBP will amend its regulations under 8 CFR part 251, 8 CFR part 258, and 19 CFR part 4 to require the electronic submission of the data elements required from vessel operators on Form I-418 in lieu of paper form submissions. CBP will no longer require the paper Form I-418. The updated regulations will require vessel operators to electronically submit the data elements required on the Form I-418 via an EDI approved by CBP. CBP will continue to use USCG’s eNOA/D system as the approved EDI. Under this process, CBP systems will compile eNOA/D and other electronic manifest data submitted by vessel operators prior to arrival and at departure into a passenger and crew list format reflective of an electronic Form I-418.¹⁶ The act of electronically submitting the data elements required on Form I-418 will also constitute the (vessel) Master’s

¹⁶ The embark date required on Form I-418 is transmitted to CBP via eNOA/D. The disembark date/date separated (*i.e.*, the date when a crewmember permanently departs the vessel) is calculated by CBP systems. This rule does not change this practice.

certification that the manifest information is accurate,¹⁷ and eliminate the current need to generally collect Form I-418's vessel master (or operator) and CBP officer signatures for certification.¹⁸ CBP will also retain its authority to require paper Form I-418 submissions in the event of certain technical difficulties, such as system outages and disruptions, that make it impossible to submit or receive manifest data electronically, and according to CBP discretion.¹⁹ This rule will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping.

CBP is currently operating an I-418 Automation test program, which serves as the basis for the regulatory program. The impact of the I-418 Automation regulatory program will slightly differ from the I-418 Automation test program due to its complete paper Form I-418 automation, eased administrative burdens, and elimination of signatures and paper processing. With its transition to a fully automated, electronic passenger and crew list (*i.e.*, Form I-418) process, the I-418 Automation regulatory program will discontinue the test program. Under the regulatory program, CBP systems will automatically reconcile eNOA/D and other manifest data submitted electronically by vessel operators prior to arrival and at departure into a passenger and crew list format reflective of an electronic Form I-418. This transition will affect commercial vessel operators and CBP.

Vessel operators will generally not incur any costs from this rule, though CBP will. CBP will sustain technology and printing costs from the regulatory program, including costs to

¹⁷ This includes certifying that certification that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

¹⁸ CBP officer signatures are generally dictated on the form as a unique receipt number tied to the officer. For the purposes of this analysis, CBP refers to these receipt numbers as signatures.

¹⁹ The Automation of CBP Form I-418 for Vessels Interim Final Rule describes particular exceptions to the electronic submission requirement. In particular, CBP will also retain its authority to require paper submissions in the event the master or agent of the vessel is unable to electronically submit the data elements required on Form I-418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning or there is no Internet access, and there is no shore-side support available; CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information; or where CBP, in its discretion, determines that a paper Form I-418 is acceptable under the circumstances presented by the master or agent of a vessel.

maintain mobile devices for real-time, electronic processing and print paper Form I-418s until the admissibility inspection process is completely paperless. Across the period of analysis, these monetized costs will equal \$45,000 in present value and \$12,000 on an annualized basis. These costs represent the total costs of the rule.

Following this rule’s implementation, vessel operators will enjoy \$16.1 million in monetized present value cost savings from automated Form I-418 submissions and forgone printing and dual processing between FY 2021 and FY 2025 (using a 7 percent discount rate). During the same period, CBP will experience a total monetized present value cost saving of \$37.2 million from the rule’s forgone printing requirements, streamlined mobile processing and post-inspection tasks, and forgone storage and shipping costs (using a 7 percent discount rate). CBP may dedicate these cost savings to other agency mission areas, such as improving border security or facilitating trade. In total, the monetized cost savings of this rule will equal \$53.3 million in present value and \$13.9 million on an annualized basis over the period of analysis (using a 7 percent discount rate).

The Executive Summary Table outlines the estimated costs and benefits (cost savings) of the I-418 Automation regulatory program from FY 2021 to FY 2025. As illustrated, the benefits (cost savings) of this rule outweigh its costs, with the total monetized net benefit (net cost saving) of the regulatory program measuring \$53.3 million in present value and \$13.9 million on an annualized basis (using a 7 percent discount rate).

Executive Summary Table: Net Benefit (Cost Saving) of I-418 Automation Regulatory Program, FY 2021-FY 2025 (2019 U.S. Dollars)

	Present Values		Annualized Values	
	3% Discount Rate	7% Discount Rate	3% Discount Rate	7% Discount Rate
Total Cost	\$52,067	\$45,458	\$11,710	\$11,863
Total Benefit	\$62,546,086	\$53,306,084	\$14,066,940	\$13,910,918
Total Net Benefit	\$62,494,018	\$53,260,626	\$14,055,230	\$13,899,055

Notes: The estimates in this table are contingent upon CBP’s vessel arrival/departure projections as well as the discount rates applied. Estimates may not sum to total due to rounding.

2. Purpose of Rule

Commercial vessels arriving at and departing from U.S. ports of entry (POEs) must comply with statutory and regulatory requirements to engage in U.S. trade. As previously mentioned, under current regulations commercial vessels, regardless of whether they are cargo, non-cargo,²⁰ or cruise ships, traveling to U.S. POEs from a foreign port or place must begin their trip by submitting similar manifest information electronically to USCG through eNOA/D and APIS, and then submitting the same manifest data to CBP on the paper Form I-418. At departure, commercial vessels must submit similar departure data to USCG and CBP. Despite similarities in the vessel arrival and departure data submitted per Form I-418, APIS, and eNOA/D requirements, current regulations do not allow data to be transmitted electronically, such as through eNOA/D or email, to satisfy Form I-418's passenger and crew list submission requirement. In fact, failure to submit the arrival or departure manifest in paper format may result in fines and penalties. To reduce redundant data submissions and automate manifest recordkeeping, CBP launched the I-418 Automation test program in 2011. This test has allowed for the automated, electronic submission of the data elements on Form I-418 from test participants using manifest data previously submitted electronically to the NVMC through eNOA/D, APIS, or other means. Based on the successful operation of the test, CBP now intends to establish the automated, electronic Form I-418 data submission process by regulation.

Through this rulemaking, CBP will amend its regulations under 8 CFR part 251, 8 CFR part 258, and 19 CFR part 4 to require the electronic submission of the data elements required from vessel operators on Form I-418 in lieu of paper form submissions. CBP will generally no longer require the paper Form I-418. The updated regulations will require vessel operators to electronically submit the data elements required on the Form I-418 via an EDI approved by CBP. CBP will continue to use the eNOA/D system as the approved EDI. Under this process, CBP systems will compile eNOA/D, APIS, and any other electronic manifest data submitted by vessel

²⁰ For the purposes of this analysis, non-cargo commercial vessels include all commercial vessels other than cargo ships and cruise ships. Tugboats fall under this classification.

operators prior to arrival and at departure into a passenger and crew list format reflective of an electronic Form I-418.²¹ The act of electronically submitting the data elements required on Form I-418 will also constitute the (vessel) Master's certification that the manifest information is accurate,²² and eliminate the current need to generally collect Form I-418's vessel master (or operator) and CBP officer signatures for certification.²³ CBP will also retain its authority to require paper Form I-418 submissions in the event of certain technical difficulties, such as system outages and disruptions, that make it impossible to submit or receive manifest data electronically, and according to CBP discretion.²⁴ This rule will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping.

3. Population Affected by Rule

This rule will affect commercial vessel operators and CBP, though at different magnitudes according to the arriving vessel type and I-418 Automation test program participation during the period of analysis spanning from FY 2021 to FY 2025. To determine the extent of the population affected by this rule, CBP relies on historical commercial vessel arrivals/departures and test participation data.

From FY 2015 to FY 2019, cargo and non-cargo vessel arrivals/departures of I-418 Automation test program participants grew at a compound annual rate of 6.0 percent while non-

²¹ The embark date required on Form I-418 is transmitted to CBP via eNOA/D. The disembark date/date separated (*i.e.*, the date when a crewmember permanently departs the vessel) is calculated by CBP systems. This rule does not change this practice.

²² This includes certifying that certification that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

²³ CBP officer signatures are generally dictated on the form as a unique receipt number tied to the officer. For the purposes of this analysis, CBP refers to these receipt numbers as signatures.

²⁴ As described above, CBP will retain its authority to require paper submissions in the event the master or agent of the vessel is unable to electronically submit the data elements required on Form I-418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning or there is no Internet access, and there is no shore-side support available; CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information; or where CBP, in its discretion, determines that a paper Form I-418 is acceptable under the circumstances presented by the master or agent of a vessel.

participant cargo and non-cargo vessel arrivals/departures declined at a compound annual rate of 1.9 percent. During the same period, participant and non-participant cruise ship arrivals/departures both grew at a compound annual rate of 2.4 percent (see Table 1). In the future, CBP projects that commercial vessel arrivals/departures will remain consistent with their more conservative historical trends prior to the COVID-19 pandemic beginning in 2020. Accordingly, CBP estimates that future cargo and non-cargo vessel arrivals/departures of I-418 Automation test program participants will increase increasing at a rate of 6.0 percent per year, non-participant cargo and non-cargo vessel arrivals/departures will decrease at a rate of 1.9 percent per year, and all cruise ship arrivals/departures will increase at a rate of 2.4 percent per year from their FY 2019 values between FY 2021 and FY 2025.²⁵ CBP believes that these projections best represent the normal, recent growth of commercial vessel arrivals/departures while still accounting for the projected economic and travel slowdowns due to the COVID-19 pandemic. CBP did not use FY 2020 data as a basis for future growth because it exhibits extreme, abnormal drops in vessel arrivals/departures due to the COVID-19 pandemic beginning during that year. However, CBP recognizes the uncertainty in this assumption and that the rate of economic recovery from the COVID-19 pandemic will depend on many factors, including how quickly businesses can recover, rates of infection, and global supply chains. CBP does not believe that this rule will directly affect the volume of future commercial vessel

²⁵ Based on historical commercial vessel data and future commercial vessel demand outlooks. For future cargo and non-cargo vessel outlook information, see: Pallis, Athanasios A, et al. *Transport and Trade Facilitation: COVID-19 and Maritime Transport Impact and Responses*, United Nations Conference on Trade and Development (UNCTAD), Series No. 15, March 2021. Available at https://unctad.org/system/files/official-document/dtl1b2021d1_en.pdf. Accessed July 23, 2021; World Bank Group. *Global Economic Prospects*. Chpt. 1. World Bank Group Publishing. June 2021. Available at <https://openknowledge.worldbank.org/bitstream/handle/10986/35647/9781464816659-ch01.pdf>. Accessed July 23, 2020; “Moody’s: Outlook for US public ports revised to stable on strengthening economic activity, improving cargo volumes.” *Moody’s Investors Service*, December 7, 2020. Available at http://www.moody’s.com/researchdocumentcontentpage.aspx?docid=PBC_1247050. Accessed July 23, 2021; Ohse, Friedemann. “Will 2021 bring about recovery for the global maritime industry?” *OceanInsights*, September 30, 2020. Available at https://www.ocean-insights.com/business-news/will-2021-bring-about-recovery-for-the-global-maritime-industry/?cli_action=1602257398.714 1/8. Accessed October 9, 2020. For future cruise ship outlook information, see: Giese, Monique. “COVID-19 Impacts on Cruise Industry.” *KPMG, July 23, 2020*. Available at <https://home.kpmg/xx/en/blogs/home/posts/2020/07/covid-19-impacts-on-global-cruise-industry.html>. Accessed October 23, 2020; McMahon, Shannon. “5 takeaways from the cruise industry’s report on a return to sailing.” *Washington Post*, September 21, 2020. Available at <https://www.washingtonpost.com/travel/2020/09/21/cruise-return-report-covid-19/>. Accessed October 23, 2020.

arrivals/departures, and thus predicts that the projected arrivals/departures will be the same with and without this rule's implementation (*i.e.*, the baseline).

To estimate future commercial vessel arrivals/departures with and without this rule, CBP first applies the projected growth rates for cargo and non-cargo vessel arrivals/departures of I-418 Automation test program participants and non-participants (6.0 percent and 1.9 percent, respectively) and cruise ship arrivals/departures (2.4 percent) to their respective FY 2019 values (see Table 1). CBP then projects the estimates forward through the period of analysis, FY 2021 to FY 2025. When making such projections, CBP presumes that the I-418 Automation test program will continue to exist during the period of analysis in the absence of any rulemaking to automate the Form I-418 process. In contrast, the test program will transition into a regulatory program in which all commercial vessel operators participate in an automated Form I-418 data submission process upon this rule's implementation.

As previously stated, CBP does not believe that this rule will directly affect the future volume of commercial vessel arrivals/departures, and thus predicts that future commercial vessel arrivals/departures will be the same with and without this rule's implementation (*i.e.*, the baseline). As Table 1 shows, CBP estimates that almost 424,000 commercial vessel arrivals/departures will occur between FY 2021 and FY 2025, including 372,000 cargo and non-cargo vessel arrivals/departures and 53,000 cruise ship arrivals/departures. Nearly 98,000 (23 percent) of these arrivals/departures will correspond to former (or ongoing in the absence of this rule) I-418 Automation test program participants, while the remaining 326,000 (77 percent) will correspond to non-former I-418 Automation test program participants (or non-test participants in the absence of this rule). Nearly all of these vessel operators will be affected by the rule. Of the arrivals/departures of former (or ongoing) I-418 Automation test program participants, CBP estimates that 50 percent will correspond to participants who fully participated in the test program and the remainder will correspond to participants who only partially participated (see Table 1). According to field interviews, the majority of vessel operators participating in the I-

418 Automation test program continued to provide a paper Form I-418 upon arrival/departure despite having submitted an electronic Form I-418 to ensure full compliance with CBP regulations.²⁶ For the purposes of this analysis, CBP refers to these vessel operators as those who partially participated in the I-418 Automation test program. Under the baseline, non-I-418 Automation test program participants and 50 percent of test program participants will continue to submit paper Form I-418s with each projected arrival/departure, while the remaining test participants will submit only automated versions of Form I-418 with each future arrival/departure. Alternatively, with the rule, each arrival/departure will presumably result in an automated Form I-418 submission.

²⁶ Although the I-418 Automation test program waived the regulatory requirement to submit Form I-418s by paper, certain test participants insisted on submitting paper Form I-418s to ensure full compliance with CBP regulations. Source: Email correspondence with CBP's Office of Field Operations on February 23, 2016.

Table 1. Projected Commercial Vessel Arrivals and Departures

	FY 2019*		FY 2021		FY 2022		FY 2023		FY 2024		FY 2025		Total, FY 2021- FY 2025	
Number of	Cargo & Non- Cargo Vessels	Cruise Ships	Cargo & Non- Cargo Vessels	Cruise Ships	Cargo & Non- Cargo Vessels	Cruise Ships	Cargo & Non- Cargo Vessels	Cruise Ships	Cargo & Non- Cargo Vessels	Cruise Ships	Cargo & Non- Cargo Vessels	Cruise Ships	Cargo & Non- Cargo Vessels	Cruise Ships
Non-I-418 Automation Test Program Participants														
Growth in Vessel Arrivals/Departures	--	--	-1.9%	2.4%	-1.9%	2.4%	-1.9%	2.4%	-1.9%	2.4%	-1.9%	2.4%	--	--
Vessel Arrivals/Departures	64,155	4,319	62,936	4,423	61,740	4,529	60,567	4,638	59,416	4,749	58,287	4,863	302,946	23,202
Form I-418 Submissions	64,155	4,319	62,936	4,423	61,740	4,529	60,567	4,638	59,416	4,749	58,287	4,863	302,946	23,202
I-418 Automation Test Program Participants														
Growth in Vessel Arrivals/Departures	--	--	6.0%	2.4%	6.0%	2.4%	6.0%	2.4%	6.0%	2.4%	6.0%	2.4%	--	--
Total Vessel Arrivals/Departures	11,487	5,496	12,176	5,628	12,907	5,763	13,681	5,901	14,502	6,043	15,372	6,188	68,638	29,523
Vessel Arrivals/Departures of Participants Fully Participating in Test	5,744	2,748	6,088	2,814	6,454	2,882	6,841	2,951	7,251	3,022	7,686	3,094	34,320	14,763
Vessel Arrivals/Departures of Participants <u>Partially</u> Participating in Test	5,743	2,748	6,088	2,814	6,453	2,881	6,840	2,950	7,251	3,021	7,686	3,094	34,318	14,760
Total Form I-418 Submissions ⁺	11,487	5,496	12,176	5,628	12,907	5,763	13,681	5,901	14,502	6,043	15,372	6,188	68,638	29,523
Form I-418 Submissions from Participants Fully Participating in Test	5,744	2,748	6,088	2,814	6,454	2,882	6,841	2,951	7,251	3,022	7,686	3,094	34,320	14,763
Form I-418 Submissions from Participants <u>Partially</u> Participating in Test	5,743	2,748	6,088	2,814	6,453	2,881	6,840	2,950	7,251	3,021	7,686	3,094	34,318	14,760
Total														
Vessel Arrivals/Departures	75,642	9,815	75,112	10,051	74,647	10,292	74,248	10,539	73,918	10,792	73,659	11,051	371,584	52,725
Form I-418 Submissions	75,642	9,815	75,112	10,051	74,647	10,292	74,248	10,539	73,918	10,792	73,659	11,051	371,584	52,725

*Not in period of analysis.

⁺Form I-418s submitted in both electronic and paper format only counted as one form submission.

Note: Estimates may not sum to total due to rounding.

4. Costs of Rule

This rule will automate the Form I-418 process for all commercial vessel operators and eliminate the regulatory guidelines in place regarding the submission and retention of paper Form I-418s. These changes will generally not introduce new costs to commercial vessel operators, but they will introduce some costs to CBP. If vessel operators request a copy of their stamped and annotated electronic Form I-418, which they receive by paper now for CBP processing, they will incur negligible costs to do so.²⁷ CBP will sustain technology and printing costs from the Form I-418 Automation regulatory program, including costs to maintain mobile devices for real-time, electronic processing, and to print the paper Form I-418 until the admissibility inspection process is completely paperless. Across the period of analysis, these monetized costs will equal \$46,000 in present value and \$12,000 on an annualized basis (using a 7 percent discount rate). These costs represent the total costs of the rule, as illustrated in Table 2.

Table 2. Total Present Value and Annualized Costs of I-418 Automation Regulatory Program, FY 2020-FY 2024 (2019 U.S. Dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost	\$52,067	\$45,458
Annualized Cost	\$11,710	\$11,863

Note: The estimates in this table are contingent upon CBP's vessel arrival/departure projections as well as the discount rates applied.

5. Benefits (Cost Savings) of Rule

Besides its costs to CBP, this rule will provide considerable benefits (cost savings) to vessel operators and CBP. Following this rule's implementation, vessel operators will enjoy \$16.1 million in monetized present value cost savings from forgone paper Form I-418 submissions and form printing between FY 2021 and FY 2025 (using a 7 percent discount rate). During the same period, CBP will experience a total monetized present value cost saving of \$37.2 million from the rule's avoided printing, streamlined mobile post-inspection processing and electronic recordkeeping (using a 7 percent

²⁷ Source: Correspondence with CBP's Office of Field Operations on November 24, 2020.

discount rate). CBP may dedicate these cost savings to other agency mission areas, such as improving border security or facilitating trade. In total, the monetized cost savings of this rule will equal \$53.3 million in present value and \$13.9 million on an annualized basis over the period of analysis (using a 7 percent discount rate; see Table 3).

Table 3. Total Present Value and Annualized Benefits (Cost Savings) of I-418 Automation Regulatory Program FY 2020-FY 2024 (2019 U.S. Dollars)

	3% Discount Rate	7% Discount Rate
Present Value Benefit	\$62,546,086	\$53,306,084
Annualized Benefit	\$14,066,940	\$13,910,918

Note: The estimates in this table are contingent upon CBP’s vessel arrival/departure projections as well as the discount rates applied.

6. Net Impact of Rule

Table 4 summarizes the monetized costs and benefits (cost savings) of the I-418 Automation regulatory program to vessel operators and CBP from FY 2021 to FY 2025. As illustrated, the savings from this rule outweigh its costs, with the total monetized net cost saving of the regulatory program measuring \$53.3 million in present value and \$13.9 million on an annualized basis (using a 7 percent discount rate).

Table 4. Net Benefit (Cost Saving) of I-418 Automation Regulatory Program, FY 2020-FY 2024 (2019 U.S. Dollars)

	Present Values		Annualized Values	
	3% Discount Rate	7% Discount Rate	3% Discount Rate	7% Discount Rate
Total Cost	\$52,067	\$45,458	\$11,710	\$11,863
Total Benefit	\$62,546,086	\$53,306,084	\$14,066,940	\$13,910,918
Total Net Benefit	\$62,494,018	\$53,260,626	\$14,055,230	\$13,899,055

Notes: The estimates in this table are contingent upon CBP’s vessel arrival/departure projections as well as the discount rates applied. Estimates may not sum to total due to rounding.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general

notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. Executive Order 12988 requires agencies to conduct reviews on civil justice and litigation impact issues before proposing legislation or issuing proposed regulations. The order requires agencies to exert reasonable efforts to ensure that the regulation identifies clearly preemptive effects, effects on existing federal laws or regulations, identifies any retroactive effects of the regulation, and other matters. DHS has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or the other matters addressed in the Executive Order.

G. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The Form I-418 information collected under 8 CFR part 251.1 and 8 CFR part 251.3 is included under OMB control number 1651-0103. Under the Automation of CBP Form I-418 for Vessels rule, CBP systems will automatically reconcile eNOA/D, APIS, and any other manifest data submitted electronically by vessel operators prior to arrival and at departure to create an electronic version of Form I-418. CBP will use the automated, electronic Form I-418 for all commercial vessel crew and passenger admissibility inspections and processing, and thus generally establish a completely paperless Form I-418 process for all commercial vessel arrivals and departures. CBP plans to retain the paper Form I-418 and conduct paper Form I-418 processing only when the master or agent of the vessel is unable to electronically submit the data elements required on Form I-418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning or there is no Internet access, and there is no shore-side support available; CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information; or where CBP, in its discretion, determines that a paper Form I-418 is acceptable under the circumstances presented by the master or agent of a vessel. CBP will conduct such processing to not hinder, stop, or otherwise penalize maritime traffic. In accordance with the OMB Notice of Action dated April 3, 2018, CBP will submit a discontinuation request for OMB control number 1651-0103 along with this rule's publication because this information collection is duplicative.

H. Privacy Interests

DHS will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule, and will issue or update any necessary Privacy Impact

Assessment and/or Privacy Act System of Records notice to fully outline processes that will ensure compliance with Privacy Act protections.

LIST OF SUBJECTS

8 CFR part 251

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR part 258

Aliens, Longshore and harbor workers, Reporting and recordkeeping requirements, Seamen.

19 CFR part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, DHS is amending 8 CFR parts 251 and 258, and 19 CFR part 4, as set forth below.

TITLE 8 – ALIENS AND NATIONALITY

PART 251 – ARRIVAL AND DEPARTURE MANIFESTS AND LISTS:

SUPPORTING DOCUMENTS

1. The general authority citation for part 251 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282, 8 CFR part 2.

§ 251.1 [Amended]

2. Amend § 251.1 as follows:

- a. Revise paragraph (a)(1);
- b. Revise paragraph (a)(2) introductory text;
- c. In paragraph (a)(2)(i), remove the word “notation” and add in its place “information”;

d. In paragraph (a)(2)(ii) introductory text, remove the words “shall note” and adding in their place “must indicate”;

e. In paragraph (a)(2)(iii)(A), remove the words “shall note on” and adding in their place “must indicate in”;

f. In paragraph (a)(2)(iii)(B):

i. Remove the words “shall note on” and add in their place “must indicate in”; and

ii. Remove the the words “shall show” and add in their place “must show”;

g. In paragraph (a)(2)(iv) introductory text:

i. In the first sentence remove the words “shall note on” and add in their place “must indicate in”; and

ii. In the second sentence, remove the words “shall note” and add in their place “must indicate”;

h. In paragraph (a)(2)(v):

i. Remove the words “shall note on” and add in their place “must indicate in”; and

ii. Remove the words “will note the” and add in their place “will indicate the”;

i. In paragraph (a)(3)(i) introductory text, remove the words “shall not be” and add in its place “is not”;

j. In paragraph (a)(3)(ii), remove the words “shall note the manifest in the manner” and add in their place “must follow the instructions”;

k. In paragraph (a)(3)(iii):

i. Remove the words “shall not be” and adding in their place “is not”; and

ii. remove the words “noted on” and add in their place “indicated in”;

l. In paragraph (a)(4), remove the words “shall annotate Form I-418 presented at the onward port to indicate” and add in their place “must electronically submit via an electronic data interchange system approved by CBP”;

m. In paragraph (a)(5), remove the words “accompany the manifest” and add in their place “be sent to CBP electronically or be presented to CBP upon arrival at the port of immigration inspection”;

n. Add paragraph (a)(6);

o. In paragraph (b):

i. Remove the word “shall” wherever it appears and add in its place “must”;

ii. Remove the words “United States Customs Service” and add in their place “CBP”; and

iii. Remove the word “annotate” and add in its place “electronically update the data in”;

p. In paragraph (c), remove the word “shall” and add in its place “must”.

The revisions and addition read as follows:

§ 251.1 Arrival manifests and lists.

(a) * * * (1) *General.* Except as provided in paragraph (a)(6) of this section, the master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States must submit a manifest of all crewmen on board by electronically submitting the data elements required on CBP Form I-418, Passenger List - Crew List, via an electronic data interchange system approved by CBP.

(2) *Longshore work information.* Except as provided in paragraph (a)(6) of this section, the master or agent of the vessel must electronically submit via an electronic data interchange system approved by CBP an affirmation as to whether crewmen aboard the vessel will be used to perform longshore work at any United States port before the vessel departs the United States.

* * * * *

(6) *Exception to the requirement to submit Form I-418 data elements and longshore work information electronically.* The master or agent of any vessel that is arriving in the United States from a foreign place or an outlying possession of the United States, and is required to submit a manifest, may submit a paper Form I-418 to CBP upon arrival at the port where immigration inspection is performed when:

(i) The master or agent of the vessel is unable to electronically submit the data elements required on Form I-418 via an electronic data interchange system approved by CBP because there is no Internet access in that location or onboard computers are experiencing technical difficulties, and there is no shore-side support available; or

(ii) CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information, or, in its discretion, CBP determines that a paper Form I-418 is acceptable under the circumstances presented by the master or agent of a vessel.

* * * * *

3. Amend § 251.3 by:

a. Revising paragraph (a); and

b. Adding a new paragraph (c);

The revision and addition read as follows:

§ 251.3 Departure manifests and lists for vessels.

(a) *Form I-418, Passenger List-Crew List.* Except as provided in paragraphs (b) and (c) of this section, the master or agent of every vessel departing from the United States directly to some foreign place or outlying possession of the United States must electronically submit the data elements required on Form I-418 via an electronic data interchange system approved by CBP, except when a manifest is not required pursuant to section 251.1(a). Submission of inaccurate or incomplete data will be regarded as lack of compliance with section 251(c) of the Act.

* * * * *

(c) Exception to the requirement to submit Form I-418 data elements

electronically. The master or agent of any vessel that is departing from the United States directly to some foreign place or outlying possession of the United States, and is required to submit a manifest, may submit a paper Form I-418 to CBP at the port from which such vessel is to depart when:

(1) The master or agent of the vessel is unable to submit the data elements required on Form I-418 electronically via an electronic data interchange system approved by CBP because there is no Internet access in that location or onboard computers are experiencing technical difficulties, and there is no shore-side support available; or

(2) CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information, or, in its discretion, CBP determines that a paper Form I-418 is acceptable under the circumstances presented by the master or agent of a vessel.

4. Amend § 251.5 as follows:

- a. Revise the section heading; and
- b. Remove the words “in a paper format”.

The revision reads as follows:

§ 251.5 Arrival and departure manifests for crew.

**PART 258 – LIMITATIONS ON PERFORMANCE OF LONGSHORE WORK BY
ALIEN CREWMEN**

5. The general authority citation for part 258 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1281; 8 CFR part 2.

§ 258.2 [Amended]

6. Amend § 258.2 as follows:

- a. In the introductory text, remove the words “shall note” and add in their place “must indicate”;
- b. In paragraph (a)(2), remove the words “shall note on” and add in their place “must indicate in”;
- c. In paragraph (b)(2)(i), remove the words “states on the manifest, Form I-418,” and add in their place “indicates in the manifest, or on Form I-418 if submitting the paper version,”;
- d. In paragraph (b)(2)(ii):
 - i. Remove the words “states on” and add in their place “indicates in”; and
 - ii. Remove the words “shall present” and add in their place “must present”;
- e. In paragraph (b)(2)(iii)(A), remove the word “shall” and add in its place “must”;
- f. In paragraph (b)(2)(iii)(B):
 - i. Remove the word “shall” and add in its place “must”; and
 - ii. Remove the words “Immigration and Naturalization Service” and add in their place “CBP”;
- g. In paragraph (b)(2)(iv);
 - i. In the first sentence, remove the words “states on” and add in their place “indicates in”;
 - ii. In the second sentence, remove the word shall and add in its place “must” and remove the words “shall note on” and add in their place “must indicate in”;
- h. In paragraph (b)(3), in the third sentence, remove the words “shall annotate” and add in their place “must indicate in”;
- i. In paragraph (b)(4):

i. In the first sentence, remove the words “the Immigration and Naturalization Service” wherever they appear, and add in their place “CBP” and remove “258(c)(E)(i)” and add “258(c)(4)(E)(i)” in its place; and

ii. In the second sentence, remove the words “The Service” and add in their place “CBP”; and

j. In paragraph (e):

i. In the first sentence, remove the word “shall” and add in its place “must”; and

ii. In the second sentence, remove “noted on the Form I-410” and add in its place “indicated on the electronically populated, or in the circumstances specified in section 251.1 of this chapter, paper, Form I-418”.

TITLE 19 – CUSTOMS DUTIES

PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADES

7. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

8. Amend § 4.7 by revising paragraph (a) to read as follows:

§ 4.7. Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

(a) The master of every vessel arriving in the United States and required to make entry must have on board the vessel a manifest, as required by section 431, Tariff Act of 1930 (19 U.S.C. 1431), and by this section. The manifest must be legible and complete. If it is in a foreign language, an English translation must be furnished with the original and with any required copies. The required manifest consists of a Vessel Entrance or Clearance Statement, CBP Form 1300, and the following documents: (1) Cargo Declaration, CBP Form 1302, (2) Ship’s Stores Declaration, CBP Form 1303, and (3) Crew’s Effects Declaration, CBP Form 1304, to which are attached crewmembers’ declarations on CBP

Form 5129, if the articles will be landed in the United States. Unless the exception at 8 CFR 251.1(a)(6) applies and a paper form is submitted, the master must also electronically submit the data elements required on CBP Form I-418 via an electronic data interchange system approved by CBP, which will be considered part of the manifest. Any document which is not required may be omitted from the manifest provided the word “None” is inserted in items 16, 18, and/or 19 of the Vessel Entrance or Clearance Statement, as appropriate. If a vessel arrives in ballast and therefore the Cargo Declaration is omitted, the legend “No merchandise on board” must be inserted in item 16 of the Vessel Entrance or Clearance Statement.

* * * * *

9. Amend § 4.7a as follows:

- a. Remove paragraph (b)(2);
- b. Redesignate paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively;
- c. Add paragraph (c)(5);
- d. In paragraph (d), add the words “§ 4.7b and with” after “in accordance with”; and
- e. Revise paragraph (e).

The addition and revision read as follows:

§ 4.7a. Inward manifest; information required; alternative forms.

* * * * *

(c) * * *

(5) Unaccompanied baggage must be listed on CBP Form 1302, or transmitted via an electronic data interchange system approved by CBP.

* * * * *

(e) *Passenger List*. (1) The Passenger List must be completed in accordance with § 4.7b, § 4.50, and with the requirements of applicable DHS regulations administered by CBP (8 CFR part 231).

* * * * *

10. Amend § 4.50 as follows:

- a. In paragraph (a), remove the second sentence;
- b. Add paragraph (c).

The addition reads as follows:

§ 4.50 Passenger lists.

* * * * *

(c) By the act of submitting the data elements required on CBP Form I-418 via an electronic data interchange system approved by CBP, the master certifies that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

§ 4.81 [Amended]

11. In § 4.81, amend paragraph (d) by removing the phrase“, or Customs and Immigration Form I-418 with attached Customs Form 5129,”.

12. In § 4.85 amend paragraph (c)(1) by:

- a. In the third sentence, removing the words “a Passenger List, Customs and Immigration Form I-418, in such number of copies as may be required for local Customs purposes, of any cargo or passengers on board manifested for discharge at that port,”; and
- b. Adding a sentence following the third sentence.

The addition reads as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

(c) ***

(1) *** The master must also update the data elements required on CBP Form I-418 that were electronically submitted via an electronic data interchange system approved by CBP for any passengers on board that are manifested for discharge at that port. ***

§ 4.91 [Amended]

13. In § 4.91 amend paragraph (c) by removing, in the second sentence, the words “Passenger List, Customs and Immigration Form I-418” and adding in their place “updated data elements required on CBP Form I-418 that were submitted electronically via an electronic data interchange system approved by CBP”

Alejandro N. Mayorkas
Secretary,
U.S. Department of Homeland Security